THE
MADRAS LAW JOURNAL.

I] JANUARY [1947

THE MARCH OF LAW : 1946.

It is a ticklish question: "If salt itself should lose its saltness wherewith shall ye season it?" Likewise, "If the judgments delivered merely sketch the course of decided cases and relay the last case on the facts found whereto will serious students of law turn for a large treatment of fundamental concepts and a felicitous, but not the less, precise extension of principles?" Fortunately there continue to be rendered every year a certain number of judgments which in a real sense constitute a broadening of the law from precedent to precedent. During the last year, there have been 37 decisions of the Judicial Committee, eight rulings of the Federal Court besides a large number of other cases reported in the columns of this journal. An attempt is here made to indicate the changes effected in some branches at any rate of the law.

THE HIGH COURT AND ITS POWERS.—Though in England an order of discharge by the High Court on the return to a writ of *habeas corpus* is regarded as final, it is pointed out in *King-Emperor* v. *Vimalabhai*[1] that an appeal will lie to the Privy Council from such an order passed by the High Courts in India under section 491 of the Criminal Procedure Code, since appeals from decisions of the High Court are heard under the Royal prerogative and there is no Act of Parliament prohibiting or authorising the prohibition of an appeal to the King in Council in such matters. In In re *Mariyappan*[2], it is explained that under section 205 of the Constitution Act, a duty is cast on the High Court in every case, of its own motion, to consider whether a substantial question of law as to the interpretation of the Act is involved and to give or withhold a certificate accordingly and that when the High Court is silent about a certificate it means that in its opinion no such certificate should issue. *Govinda Rao*, In re[3], expresses the view that the provision in clause 15 of the Letters Patent that it is only if the Judge who has passed the judgment in second appeal certifies it as a fit case for appeal that an appeal under that clause may lie is not in any manner affected by clause 44. The ruling of the Privy Council in *Kumar Singh Chhajor* v. *King-Emperor*[4] considers the power of interference of the High Court with orders of the Special Magistrates under the Special Criminal Courts' Ordinance, 1942, read with Ordinance 19 of 1943, and lays down that the High Court has power in revision only to review the sentences passed by the Special Courts, to enhance or to reduce them but not to set the conviction aside or to order a re-trial.

THE BAR—ITS RIGHTS AND DUTIES.—The desirability of framing a rule prohibiting a legal practitioner from bidding in his own name or in the name of another person at a Court-sale held in execution of a decree obtained by his client in view of the possibility of his interest coming into conflict with his duty is strongly suggested

1. (1946) 2 M.L.J. 10 (P.C.).
2. (1946) 2 M.L.J. 128.
3. (1946) 2 M.L.J. 165.
4. (1946) 2 M.L.J. 299 (P.C.).

in In the matter of *a Pleader*[1], which recognises that rule 17 of the rules framed by the High Court under the Legal Practitioners Act does not cover such a case. The decision in In re *a Pleader, Gudivada*[2], emphasises that though a legal practitioner has his duty towards his client, he has other duties and responsibilities as well and that he should not on the instructions of the client make a charge of fraud against another in an affidavit without satisfying himself that there are reasonable grounds for the allegation. In *A Pleader*, In re[3], it is recognised that though defamation of a police officer by a legal practitioner is an offence involving moral turpitude, still it does not involve such a degree of turpitude as to warrant the Court in imposing the penalty of suspension from practice and that a reprimand would be sufficient in the circumstances.

CONSTITUTIONAL LAW.—The competence of the Indian Legislature to legislate with extra-territorial effect is adverted to by the Federal Court in *Mohammad Mohyuddin* v. *King-Emperor*[4], where it is stated that though it is true that every statute is to be so construed so far as its language admits, as not to be inconsistent with the comity of nations or with the established rules of international law, there is no rule of international law or comity of nations which is inconsistent with a State exercising disciplinary control over its own armed forces, when those forces are operating outside its own territorial limits and that section 41 of the Indian Army Act of 1911 purporting to confer such jurisdiction on a Court Martial was *intra vires* the Indian Legislature by reason of section 73 of the Government of India Act, 1833, which had conferred on the Indian Legislature the power to legislate with such extra-territorial effect. In *Venkatarama Naidu* v. *Province of Madras*[5], it is held that the provisions of section 240 of the Constitution Act regarding notice and opportunity to show cause before an official is dismissed are mandatory but that according to the proviso to the section they do not apply where a person is dismissed on the ground of conduct which had led to his conviction on a criminal charge. *Governor-General in Council* v. *Krishnaswami Pillai*[6] states that when an action is brought under section 240 (3) the only relief which the Court can grant is a decree for damages for wrongful dismissal but not a declaration that the dismissal is inoperative. The ruling in *Biswanath Khemka* v. *King-Emperor*[7] makes it clear that the direction in section 256 that "no recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to or the withdrawal of magisterial powers from any person save after consultation with the district magistrate of the district in which he is working is only directory and not mandatory and non-compliance with it would not render an appointment otherwise regularly and validly made ineffective and inoperative. The decision in *Sarjoo Prasad* v. *King-Emperor*[8] lays down that since the prohibition of proceedings without the sanction of Government contained in section 270 (1) is against the institution of the proceedings itself, the applicability of the section must be judged at the earliest stage of institution. The scope and effect of section 298 directed against discrimination on ground only of religion, place of birth, colour, etc., was examined by the Privy Council in *Punjab Province* v. *Daulat Singh*[9] and it was held that sub-section (1) of the section confers a personal right on every subject of His Majesty domiciled in India, that the general legislative powers conferred on the Federal and Provincial Legislatures by section 99 (1) are subject *inter alia* to the provisions of section 298 and that the proper test as to whether there is a contravention of sub-section (1) is to ascertain the re-action of the impugned Act on the personal right conferred by the sub-section and if the effect of the Act so determined involves an infringement of such right the object of the Act however laudable will not obviate the prohibition laid down. In *Manikkasundara Bhattar* v. *R. S. Nayudu*[10], the Federal Court points out that in considering the scope of the legislative powers of the Provincial Government little assistance can be derived from a consideration of such powers prior to the Act of 1935 in view

1. (1946) 1 M.L.J. 218 (F.B.).
2. (1946) 2 M.L.J. 79 (F.B.).
3. (1946) 1 M.L.J. 95 (F.B.).
4. (1946) 2 M.L.J. 23 (F.C.).
5. (1946) 1 M.L.J. 253.
6. (1946) 1 M.L.J. 267.
7. (1946) 1 M.L.J. 155 (F.C.).
8. (1946) 1 M.L.J. 157 (F.B.).
9. (1946) 1 M.L.J. 426 (P.C.).
10. (1946) 2 M.L.J. 17 (F.C.).

of the basic conception of the earlier Act being a unitary state while the scheme of the present Act is utterly dissimilar with its structure for a federal state and its strict provisions for exclusive legislative powers in the Central and Provincial Legislatures in certain subjects and concurrent legislative powers of both in others. It also decides that the Madras Legislature had power by virtue of entry 34 in list 2 to schedule 7—charities—to legislate in respect of religious institutions within the Madras Presidency in the manner in which it purported to legislate by the Madras Temple Entry Authorisation and Indemnity Act, 1939. In *Thakur Jagannath Baksh Singh* v. *The United Provinces*[1], the Privy Council holds that the Crown cannot deprive itself of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists, that entry 21 in list 2 of schedule 7—land and land tenures—covers legislation like the United Provinces Tenancy Act, 1939, which undoubtedly cut down the absolute rights claimed by the taluqdars to be comprised in the grants of their estates as evidenced by their sanads and that the general words of section 3 of the Crown Grants Act do not affect the relations between a sanad-holder and his tenants. In re *Nagalingam*[2] states that section 2 (3) of the Defence of India Act is not restrictive of the powers of sub-section (1) and rule 121 of the Defence of India Rules is not *ultra vires* the Central Government.

Criminal Law.—The scope of the Privy Council decision in *Mahbub Shah* v. *Emperor*[3] was considered in *Nachimuthu Goundan*, In re[4], and it has been held that the former decision does not rule out the possibility of a common intention developing in the course of events or of such intention being inferred from the conduct of the assailants. Both according to section 34 of the Penal Code and the Privy Council, the section involves two elements, namely, a prior common intention and a subsequent act in furtherance of it. The Privy Council stresses that same intention or similar intention is not the same thing as common intention and that the latter is the result of a pre-arranged plan or concert or pre-meditation and that it cannot be deemed to arise from the very act which is alleged to constitute the crime. If the decision of the High Court carries with it the suggestion that the overt act and the common intention could be synchronous it may be pointed out that that is the very thing negatived by the Privy Council decisively. In In re *Subramania Aiyar*[5], it is held that when persons charged with the same substantive offence have been acquitted it is not competent to the Court to punish another, alleged to have screened them from legal punishment, as having harboured offenders within the meaning of section 216-A. The ruling in *Govinda Reddi* v. *Lakshmi Reddi*[6] holds that the voluntary obstruction of a vehicle in which persons were travelling amounts to the wrongful restraint of the persons in the vehicle and it is no defence that the persons could have got down and proceeded unmolested. In reaching this conclusion the learned Judge treated as *obiter* a suggestion to the contrary found in *Maharani of Nabha* v. *Province of Madras*[7]. In In re *Ramaswami*[8], it is pointed out that mere recovery of certain property from the house of certain persons is not by itself sufficient to attribute guilty knowledge to them and cannot warrant a conviction under section 411. The interesting position is elucidated in In re *Vellai Mudali*[9], that waylaying a girl and tying a *tali* round her neck will not amount to going through the ceremony of being married within the meaning of section 496.

Criminal Procedure.—A principle often not sufficiently appreciated is recalled in *Elaya Pillai* In re[10], which points out that it is the duty of the magistrate conducting the preliminary inquiry to see whether it is reasonably clear that upon the evidence

1. (1946) 2 M.L.J. 29 (P.C.).
2. (1946) 2 M.L.J. 403.
3. (1945) 2 M.L.J. 144 (P.C.).
4. (1946) 2 M.L.J. 137.
5. (1946) 2 M.L.J. 482.
6. (1946) 2 M.L.J. 281.
7. I.L.R. (1942) Mad. 696.
8. (1946) 2 M.L.J. 435.
9. (1946) 2 M.L.J. 428.
10. (1946) 1 M.L.J. 449.

the accused persons stand a chance of being convicted and to discharge the accused if he finds the evidence not reliable. *Abdul Rahim* v. *King-Emperor*[1] is an important pronouncement of the Privy Council on the effect of mis-reception of evidence in a jury trial. In a murder reference and appeal and in an appeal from conviction for murder it is open to the High Court after excluding such evidence to maintain the conviction, provided the admissible evidence remaining is in its opinion sufficient to establish the guilt of the accused. Likewise if there is a serious misdirection or non-direction the High Court can act similarly. The fact that in some cases an appeal would lie both on fact and on law while in others an appeal would lie on law only is neither an important distinction nor a determining feature for this purpose. In *Kwaku Mensah* v. *The King*[2], the Privy Council points out that if in a murder trial with the aid of a jury there is non-direction, when there is evidence on which the jury could return a verdict of manslaughter, the trial would irrespective of whether the defence relied on such evidence or not, stand vitiated. One of the cardinal principles in regard to criminal trials is emphasised in In re *Pichu Pillai*[3], namely, that if there is a lacuna in the prosecution evidence the accused is entitled to the benefit of the same and a re-trial should not be ordered even if the offence was a serious one affecting the public interest. *Ramarathnam*, In re[4], points out that though an offence under section 124-A is not exclusively triable by a Court of Session, still if the matter objected to is in a vernacular paper enjoying a wide circulation, it would be desirable both from the point of view of the accused and from the point of view of the prosecution to have it tried with the aid of a jury. *Thippayya*, In re[5], points out that where an officer who has given evidence in the case succeeds the trying magistrate he is not competent to continue the trial and even the consent of the accused cannot cure the impropriety of such action. In re *Narra Parvathamma*[6] emphasises the desirability of giving to a person against whom a preliminary order is passed under section 133, Criminal Procedure Code, sufficient opportunity to meet the charge, before the order is made absolute. *Manikyala Rao* v. *Venkatappayya*[7] points out that parties in proceedings under section 145 cannot be compelled to appear in Court or to execute bonds for appearance. *Vempatti Satyanarayana Sastri*, In re[8] holds that without taking evidence and holding an inquiry it is not competent to a magistrate straightaway on a complaint by the petitioner that the counter-petitioner has no right to do certain acts and there is a likelihood of a breach of peace if such acts were done, to direct the police to warn the counter-petitioner not to create a breach of the peace by doing those acts. Two valuable decisions of the Judicial Committee concerning section 164 are to be found in *Brij Bhushan Singh* v. *King-Emperor*[9] and *Mamand* v. *King-Emperor*[10]. They lay down categorically that a statement made under section 164 can be used to cross-examine the person who made it and the result may be to show that the evidence of the witness is false but that does not establish that what he stated out of Court under section 164 is true and it would be an improper use of such statements to treat them as substantive evidence of the truth of the facts stated in them. In *Palaniswami Goundan* In re[11], it is held that it would be competent to a police officer after he has laid a charge, on receipt of fresh information to lay further charge sheets. In re *Bommareddi Satyanarayana Reddi*[12] points out that section 227 empowers the Court at any time before judgment is pronounced to alter or add to any charge and the sections that follow section 227 show that what the Legislature intended was that the Court may add a new charge at any time before judgment is pronounced provided that the safeguards mentioned in section 225 are observed. In re *Valli Ammal*[13] makes it clear that there is nothing in section 237 read with section 236 to suggest

1. (1946) 2 M.L.J. 1 (P.C.).
2. (1946) 1 M.L.J. 212 (P.C.).
3. (1946) 1 M.L.J. 331.
4. (1946) 1 M.L.J. 237.
5. (1946) 2 M.L.J. 280.
6. (1946) 2 M.L.J. 271.
7. (1946) 1 M.L.J. 443.
8. (1946) 1 M.L.J. 458.
9. (1946) 1 M.L.J. 147 (P.C.).
10. (1946) 1 M.L.J. 211 (P.C.).
11. (1946) 1 M.L.J. 406.
12. (1946) 2 M.L.J. 364.
13. (1946) 2 M.L.J. 351.

that when a person is charged with murder that person cannot be convicted of an offence under one of the property sections. In *Reference from Tinnevelly Sessions*[1], it is pointed out that section 240 only applies to charges containing more heads than one against a person and that when there is a mixed charge of murder and offence against property the proper course is for the Sessions Judge to take the charge framed by the Committing Magistrate and adopt it or in case he wishes to change the charge to include in the modified charge all the various heads found in the Committing Magistrate's charge. In *Latchanna* v. *Kannayamma*[2], it is ruled that if a magistrate begins a trial as a summons case and then after taking evidence finds that an offence triable only under warrant-case procedure has been committed he is entitled to apply warrant case procedure thenceforward and it cannot be said that under sections 245 and 246 the magistrate was bound at that stage to acquit the accused of the offence triable under the summons procedure and not entitled to register the case as a warrant case and proceed under chapter 21. *Narayana Singh* v. *Seetharatnamma*[3] holds that a magistrate has no power to pass an order of discharge under section 253 (1) until he has examined all the witnesses. *Ramaswami Naicker* v. *Rangaswami Naicker*[4] rules that in a warrant case where a charge has been framed and the case thereafter transferred to another magistrate who grants a *de novo* trial it is not competent to that magistrate in the absence of the complainant to pass an order of discharge under section 259 ignoring the charge already framed. *Ramanugrah Singh* v. *King-Emperor*[5] is an important decision of the Privy Council pointing out that requirements of the ends of justice must be the determining factor both for the Sessions Judge in making a reference and for the High Court in disposing of it under section 307. In general, if the evidence is such that it can properly support a verdict of either guilty or not guilty according to the view of the trial Court and if the jury takes one view and the Judge thinks that they should have taken the other, the view of the jury must prevail. If, however, the High Court considers that on the evidence, no reasonable body of men could have reached the conclusion arrived at by the jury, the ends of justice would require the verdict to be disregarded. The test of reasonableness on the part of the jury may not be conclusive in every case as where in the light of further evidence placed before the High Court the verdict is shown to be wrong. Otherwise the High Court will interfere only where the verdict is perverse, manifestly wrong or against the weight of evidence. In re *Pattan Ali Khan*[6] holds that section 367 does not authorise a succeeding Sessions Judge to pronounce a judgment of his predecessor who had heard the case. The former becomes *functus officio* as soon as he has handed over charge and has no jurisdiction to write a judgment; nor has the successor any jurisdiction to base a judgment on evidence recorded by his predecessor and a conviction by him would be illegal. In In re *Kunju Iyer*[7], it is pointed out that where an appellate Court set aside a conviction under section 409, Indian Penal Code, but directed the papers to be sent to the lower Court for a charge being framed under section 420, the provisions of section 403, Criminal Procedure Code, cannot apply and the proceedings cannot be quashed. In In re *Thiagaraja Bhagavathar*[8], it is held that in an appeal under section 411-A (1) (*b*) on a matter involving a question of fact the Court has power to set aside the verdict of the jury if on a consideration of the facts and all the circumstances of the case, it is convinced that the verdict is unreasonable. It is further held that the fact that the trial Judge agreed with the majority verdict of the jury is a matter which the appellate Court can take into consideration in considering the reasonableness of the jury's findings. In re *Neeladri Appadu*[9] declares that the practice of the Madras High Court has been for not allowing a jail appeal by counsel on a matter already disposed of under section 421 as the Court is *functus officio* where an appeal has been so disposed of and cannot hear it again. In *Ex-Rana Birpal Singh* v. *King-Emperor*[10], the Federal Court has held that once the Court is satisfied that a person

1. (1946) 2 M.L.J. 243.
2. (1946) 2 M.L.J. 279.
3. (1946) 1 M.L.J. 435.
4. (1946) 2 M.L.J. 251.
5. (1946) 2 M.L.J. 200 (P.C.).
6. (1946) 2 M.L.J. 195.
7. (1946) 1 M.L.J. 372.
8. (1946) 1 M.L.J. 42.
9. (1946) 2 M.L.J. 169.
10. (1946) 1 M.L.J. 322 (F.C.).

is detained under the Bengal State Priso[illegible]lation (III of 1818) there is no jurisdiction under section 491 which the Co[illegible]ercise in the matter.

EVIDENCE.—An interesting point of [illegible] evidence was decided by the Privy Council in *Natha Singh* v. *King-Emperor*[1], where it is held that however improbable an alleged motive may be the prosecution is entitled to call evidence in support of it and none the less so because such evidence may suggest that the accused had committed some crime other than that with which he is charged. In In re *Mayilvahanam*[2], it is held that an Assistant Inspector of Customs is not a police officer within the meaning of section 25 of the Evidence Act and that the section cannot be extended to any class of officers merely because of similarity of function. The Privy Council decision in *Jagadish Narain* v. *Nawab Sayid Ahmad Khan*[3] makes it clear that the statement of a person admissible under section 32 has little evidential value where the source of his information as to the matters which occurred before his birth or in early youth are not disclosed. *Chainchal Singh* v. *King-Emperor*[4] is another ruling of the Privy Council which holds that where it is desired to have recourse to section 33 for the admission of the previous statement of the witness on the ground that he is incapable of giving evidence, that fact must be proved and proved strictly and the fact of the counsel for the accused consenting to the evidence of the witness being read under section 33 cannot do away with the necessity of the Court being satisfied by strict proof. The conditions to be fulfilled for the admission of secondary evidence fell to be considered in *Anand Behari Lal* v. *Dinshaw & Co.*[5], by the Judicial Committee and it is laid down that where the principal of a power of attorney is not produced and the disappearance or the impossibility of producing it is not satisfactorily proved secondary evidence cannot be let in under section 65. The admissibility of evidence relating to a statement of fact and request for assistance by a certain person, where the person that made the statement is not identified and called as a witness, was held by the Privy Council to be permitted on a reading of sections 3, 59, 60 and 114 where the fact could be made a relevant fact by the trial Judge drawing the presumption under the terms of section 114; see *Bibhabati Debi* v. *Ramendra Narain Singh*[6]. In *Manna Lal* v. *Mst. Kashibai*[7], it is laid down by the Privy Council that where a will is more than 30 years old and is produced from proper custody, the presumption under section 90 would extend to the testamentary capacity of the testator in addition to its actual execution and attestation. *Mutyalu* v. *Veerayya*[8] holds that the prohibition in section 92 is only as regards evidence sought to be adduced for the purpose of contradicting, varying, adding to or subtracting from the terms of a contract and that so long as the passing of consideration is not a term in the contract, evidence adduced to show that it did pass is not within the scope of such prohibition. In *Ramdhandas Jhajharia* v. *Ramkisondas Dalmia*[9], it is pointed out by the Privy Council that where in a case oral testimony is of an unreliable and untrustworthy character, the safest policy would be to let the documents speak for themselves but that would not mean that when the question is whether a transaction is a sale or a mortgage, form is to be preferred to substance. Whether the Full Bench decision in *Ramayya* v. *Atchamma*[10] is still good law after the decision of the Privy Council in *Ram Rattan* v. *Paramanand*[11] was raised but not decided in *Koyatti* v. *Imbichi Koya*[12] which held that where a final decree for partition was not drawn upon non-judicial stamp paper and not registered and was therefore not admissible in evidence for any purpose whatsoever, the partition itself can be found on other evidence.

HINDU LAW.—The decision in *Thimma Reddi* v. *Chinna Ranga Reddi*[13] lays down that the re-marriage of a Hindu male cannot be regarded as essential, that the reli-

1. (1946) 2 M.L.J. 297 (P.C.).
2. (1946) 2 M.L.J. 480.
3. (1946) 2 M.L.J. 98 (P.C.).
4. (1946) 1 M.L.J. 125 (P.C.).
5. (1946) 1 M.L.J. 123 (P.C.).
6. (1946) 2 M.L.J. 442 (P.C.).
7. (1946) 2 M.L.J. 453 (P.C.).
8. (1946) 1 M.L.J. 346.
9. (1946) 2 M.L.J. 457 (P.C.).
10. (1944) 2 M.L.J. 164 (F.B.).
11. (1946) 1 M.L.J. 295 (P.C.).
12. (1946) 1 M.L.J. 454.
13. (1946) 2 M.L.J. 213.

-gious rites which are required to be performed in the married state can be performed by a widower by virtue of his former marriage, that it mattered not whether the parties were Sudras or Dwijas and that if a widower wishes to re-marry the expenses incurred will not bind the joint family estate. An interesting question, namely, whether a marriage between two Hindus contracted under the Special Marriage Act could be dissolved by one of the spouses becoming converted to Islam and by having recourse to the Islamic law, was answered in the negative in *Andal Vaidyanathan* v. *Abdul Allam Vaidya*[1]. The approval accorded to the observation of Swinfen-Eady, L.J., in *Rex* v. *Superintendent, Registrar of Marriages*: Ex parte *Mir Anwaruddin*[2] that "the marriage is not a marriage in the Muhammadan sense, which can be dissolved in the Muhammadan manner," coupled with the approval of the decision in *Noor Jehan* v. *Eugene Tiscenko*[3] would suggest that it would make no difference even if the marriage had been contracted according to the Hindu rites. In *Thirumalai Naick* v. *Ethirajamma*[4] a ceremonial mode of contracting a widow re-marriage among Naickers by tying what is called "*nadu veetu thali*" was upheld in the absence of evidence to suggest that such form in invalid. *Bangaru Reddi* v. *Mangammal*[5] decides that section 2 of the Hindu Widow Re-marriage Act has no effect on property belonging to the widow absolutely on the date of her re-marriage. The decision in *Annapurnamma* v. *Manikyamma*[6] holds that where, as in the case of Sudras, no religious ceremony is essential or necessary for adoption there is no rule of Hindu law which prevents a widow having her husband's authority, adopting a son to him even if she were unchaste at the time of the adoption. In *Navaneethammal* v. *Kamalammal*[7], it is found that it is common ground that the adoption of a sister's son is recognised in the case of all Dwijas in the Madras Presidency as valid. The rights of an invalidly adopted son came up for consideration in *Venkatanarasimha Rao* v. *Varaha Narasimhaswami*[8], where it is observed that an invalidly adopted son is "a perfect stranger to the adoptive family" and as such he can have no rights, not even the right of maintenance in the adoptive family and that in such a case the rights of the adopted son in his natural family remain unaffected.

Two important rulings on the scope of the Hindu Law of Inheritance (Amendment) Act of 1929 have been given in the course of the year. In *Mahalakshmamma* v. *Suryanarayana*[9], it is held that the Act only applies to the separate property of a Hindu male who dies intestate and cannot operate in regard to properties which had become a woman's stridhanam. In *Lala Duni Chand* v. *Mst. Anar Kali*[10], the Judicial Committee has held that the Act applies not only to the case of a Hindu male who died intestate on or after the 21st February, 1929, but also to the case of such a male dying intestate before that date, if he was succeeded by a female heir who died after that date. The Privy Council further held that the words "dying intestate" in the Act are a mere description of the status of the deceased and have no reference to the time of the death of a Hindu male and that they only mean, in the case of intestacy of a Hindu male. *Thirumalai Naicker* v. *Ethirajamma*[4] points out that the requirement that "*dasi*" should be an unmarried woman does not mean that she should not have been married at any time before, and therefore an illegitimate son born to a widow kept as a continuous concubine is entitled to inherit as *dasi-putra*. An important decision on the rights of an illegitimate son is that in *Thangavelu* v. *Court of Wards*[11], which holds that the illegitimate son of a Sudra is not a coparcener with his putative father and cannot succeed to him by survivorship, that in the case of succession to an impartible estate the widow is to be preferred to him, that his right to maintenance as against the estate is well

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1. (1946) 1 M.L.J. 402.
2. (1917) 1 K.B. 634, 639.
3. (1941) 45 C. W.N. 1047.
4. (1946) 1 M.L.J. 438.
5. (1946) 2 M.L.J. 377.
6. (1946) 1 M.L.J. 108.
7. (1946) 2 M.L.J. 380.
8. (1946) 1 M.L.J. 351.
9. (1946) 1 M.L.J. 196.
10. (1946) 2 M.L.J. 291 (P.C.).
11. (1946) 2 M.L.J. 143.

UNIVERSITY OF CALCUTTA NOT TO BE REMOVED DEPARTMENT OF LAW

recognised and no proof of any special custom is necessary to entitle him to maintenance from the estate but that he will not be entitled to any allowance for his marriage expenses from the impartible estate. In *Chinnathayi* v. *Kulasekharapandiya*[1], it is laid down that a member of a joint family owning an impartible estate can on behalf of himself and his heirs renounce his right of succession but the surrender must be to all the branches of the family or to the head of the family as representing all its members. The law applicable to the succession to the property of a dancing girl was examined in *Brahadeeswara Mudaliar* v. *Rajagopal Pillai*[2], where it is held that the general rule of succession to the estate of a dancing girl is that daughters are preferred to the sons, her property being regarded as stridhanam, and the custom by which among dancing girls, sons and daughters were allowed to share the inheritance equally, in *Chandranna* v. *Nagamma*[3], cannot be deemed to apply beyond the Vizagapatam district.

In *Kesava Pandithan* v. *Govindan*[4], a Full Bench has held that a congenitally deaf and dumb male member of a joint Hindu family who on that account is disqualified from enjoying his share in the family estate is nevertheless a member of the coparcenary and as such is entitled to take and enjoy the whole estate when he becomes the sole surviving member of the family. In *Sillamani Ammal* v. *Thillai Ammal*[5], it is recognised that the property inherited by a person from his adoptive mother is not ancestral or joint family property. *Kuppuswami Mudaliar* v. *Thangavelu Mudaliar*[6] explains that the right which the two sons of a daughter acquire in the maternal grandfather's property is a joint right because they take the property with rights of survivorship but not a coparcenary right and the elder brother cannot give a valid discharge on behalf of his younger brother. *Rattamma* v. *Narayana Rao*[7] lays down that a business carried on by a Hindu joint family in partnership with strangers cannot be regarded as a new business when after the dissolution of the partnership it is carried on by the family itself and that it is quite open to a Hindu joint family to discontinue trading in partnership with others or to take new persons into partnership, provided however the nature of the business remains the same. The decision in *Krishnamurthi* v. *Chidambaram Chettiar*[8] is that where a Hindu father sues as the manager of a joint family the junior members are bound by the decree in the suit and the principle that a minor can sue to set aside a decree passed against him on the ground of gross negligence of his guardian only concerns property held by the minor in his own right and cannot cover the case of a decree against a father as manager of joint family property. A similar ruling is that in *Lakshmayya* v. *Venkateswarlu*[9] holding that in the case of contracts entered into by a manager on behalf of the family the contract could be specifically enforced even against the minor members of the family. An important aspect of the law relating to reunion was dealt with in *Venkanna* v. *Venkatanarayana*[10] where it is held that reunion does not require the present possession of family property by all parties to an agreement to reunite and the fact that a reuniting member had dissipated the whole of his share of the family estate did not prevent an agreement between him and his father to reunite and the father treating his property as joint family property.

Swaminatha Aiyar v. *Krishnaswami Aiyar*[11] decides that where a suit is brought by the payee against the maker of a promissory note and the decree is sought to be enforced against the judgment-debtor's sons to the extent of their interest in the family property, the distinction between the liability on the instrument and the liability for the consideration thereof has no significance and it is not the form of the decree or the frame of the suit but the nature of the debt that determines the sons' liability. Another aspect of the son's liability for his father's debts is dealt

1. (1946) 1 M.L.J. 164.
2. (1946) 2 M.L.J. 173.
3. (1923) 45 M.L.J. 228.
4. (1946) 1 M.L.J. 259 (F.B.).
5. (1946) 2 M.L.J. 408.
6. (1946) 2 M.L.J. 214.
7. (1946) 2 M.L.J. 485.
8. (1946) 1 M.L.J. 58.
9. (1946) 2 M.L.J. 207.
10. (1946) 2 M.L.J. 193.
11. (1946) 2 M.L.J. 307.

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with in *Kumbakonam Mutual Benefit Fund Ltd.* v. *Ramaswami*[1], which holds that it is only where the dismissal of the son from the suit or application amounts to a decision by the Court that his interest in the family property is not liable for the debt, the pious obligation rule cannot be applied against him in execution of the decree obtained against the father but not in any other case. In *Bugga Reddi* v. *Yerrikala Reddi*[2], it is held that where the endorsee of a debt sued the father alone without impleading the sons and subsequently there was a partition the decree-holder cannot proceed thereafter against the interests of the sons. In *Mst. Dan Kuer* v. *Mst. Sarla Devi*[3], the Privy Council points out that so long as the obligation to provide maintenance to the widows of the family from the joint family estate has not taken the form of a charge on the family property the obligation to pay the binding debts of the family will have precedence, as for instance in the course of the administration of the estate, over mere claims of female members for maintenance. *Dorai Raj* v. *Lakshmi*[4] is an interesting pronouncement on the guardianship rights of a putative father over his illegitimate son, among Sudras. It holds that his right to the custody of the person of the illegitimate son by a continuously kept concubine does not necessarily flow either from the duty to maintain the son or from the fact that the son has a limited right of inheritance to the putative father and that though the illegitimate son is regarded as a member of the family for all purposes, albeit of a somewhat inferior grade to an ordinary son, where the association between the parents was only for a period of four years, after which time it was completely broken off the father will not be entitled to the guardianship of the boy. In *Govindu* v. *Venkatapathi*[5], it is recognised that where owing to the lapse of time it is impossible to produce evidence of necessity in support of an alienation by a Hindu widow or evidence of inquiry by the alienee and there is no ground for suspecting abuse by the widow of her power to alienate for a necessary purpose, the Court can disregard the ordinary rule of Hindu law as to onus of proof and draw an inference in favour of the validity of the alienation, but that where a reasonable doubt exists the Court should refuse to draw the presumption. *Veluswami Goundan* v. *Dandapani*[6] deals with the validity of a gift for the "worship of God". It holds that though there are various deities worshipped by Hindus holding different tenets they are personifications of what are believed to be the various attributes or cosmic manifestations of the one Supreme Being and that a gift for the "worship of God" is not invalid as it in any case discloses a general charitable intention and the Court can apply the doctrine of *cypres* upholding the gift as a public trust even where it is not possible to ascertain with any degree of certainty how the donor intended the trust to be carried out. It further holds that the performance of gurupuja at the samadhi or tomb of a person, however pious, is not a public charitable object recognised by Hindu law.

An important aspect of stridhana law, was considered by the Privy Council in *Chhatrapati Pratap Bahadur* v. *Lachmidhar Prasad Singh*[7]. It is there pointed out that no special rules relate to the succession to a maiden's property beyond the heirs specially enumerated in the several texts and such succession is governed by the rules which relate to the succession of a woman married in an unapproved form. It is also pointed out that in default of husband in the case of a woman married in the approved form and in default of father in other cases the heirs of the husband or father succeed in the order laid down in Yagnavalkya's text—Ch. II, 135, 136—relating to the succession to the property of a male. It is further stated that the test of funeral oblations as a test of preference is inapplicable where the rival claimants are not of the same class of sapindas. In *Official Receiver, Ramnad* v. *Lakshmanan Chettiar*[8], it is held that in the Nattukottai Chetti community, the children do not have a joint interest with the mother in the stridhanam fund given to her

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1. (1946) 1 M.L.J. 344.
2. (1946) 1 M.L.J. 307.
3. (1946) 2 M.L.J. 420 (P.C.).
4. (1946) 2 M.L.J. 318.
5. (1946) 1 M.L.J. 407.
6. (1946) 1 M.L.J. 354.
7. (1946) 2 M.L.J. 411 (P.C.).
8. (1946) 2 M.L.J. 262.

at the time of her marriage, that the mother is solely entitled to the fund and when she lends it to her husband it cannot be said that the loan constituted a trust fund for the benefit of her children. In *Mooka Pillai* v. *Valavanda Pillai*[1], it is pointed out that where reversioners who were parties to a transaction by a limited owner also happen to be actual reversioners on the death of the limited owner it will not be open to them to urge that the transaction does not bind them.

INSOLVENCY.—In *Somasundaram Pillai* v. *Official Receiver*[2], it is held that an insolvent cannot after an absolute discharge move the Court under S. 5 of the Provincial Insolvency Act to stay the disbursement of the dividend claiming the benefits under section 21 of Madras Act IV of 1938. *Arunachalam Chettiar* v. *Krishnaswami Aiyar*[3] points out that the presentation *simpliciter* of an application for settlement of claims under the Madras Debt Conciliation Act does not amount to an intimation by the debtor that he had suspended or was about to suspend the payment of his debts within the meaning of section 6 (*g*) of the Provincial Insolvency Act. *Official Receiver of Vizagapatam* v. *Suryanarayana*[4] rules that according to the provisions of section 20 an *interim* receiver has such of the powers conferrable on a receiver appointed under the Civil Procedure Code as the Court may direct, and there is nothing in the Insolvency Act preventing the Insolvency Court from according sanction to an *interim* receiver to institute suits even against third parties for the vindication of the rights of the debtor in respect of whom an insolvency petition is pending. In *Hanumantha Gowd* v. *Official Receiver, Bellary*[5], it is held that when a member of a joint Hindu family is adjudged insolvent his status in the joint family remains unchanged and if by a death in the coparcenary the share of the insolvent is increased the benefit of it will accrue to the Official Receiver in whom that share is vested by reason of section 28 (4). *Ramanamma* v. *Official Receiver, Kistna*[6] rules that where a creditor files an affidavit before the Official Receiver stating that he had obtained a specified decree and mentioning the sum due to him up to the date of adjudication of the debtor he must be deemed to have proved his debt, though the affidavit is returned with a direction to file the decree copy and there was no representation and admission of the claim till after the approval of the schedule of creditors and dividend by the District Court. Also where during the pendency of an application by the decree-holder after representation requesting the Court to amend the schedule of creditors, dividend has been paid, the Court has ample power to direct the creditors who have so received dividends to bring back those amounts and then to pass an order directing a redistribution after including the decree-holder among the creditors. In In re *Srinivasa Rao*[7], it is pointed out that to constitute concealment within the meaning of section 103 (*b*) (*ii*) of the Presidency Towns Insolvency Act, there must be some act on the part of the insolvent whereby he can be shown to have wilfully kept some property away from the notice of the Official Assignee and if there was a duty on his part to disclose or if there was a call on him to disclose and he did not conform to it or gave incorrect particulars there would be a case of concealment within the meaning of the statute.

TRANSFER OF PROPERTY ACT.—In *Ankamma* v. *Narasayya*[8], it is pointed out that section 41 will not apply where a donor claims that a gift has been duly revoked by him on account of non-fulfilment of a certain condition laid down in the deed of gift. *Picha Moopanar* v. *Velu Pillai*[9] holds that if a partition between a Hindu father and his sons is unequal and the father is allotted a smaller share than would be his due, with intent to defeat the creditors, the latter can avoid the partition under section 53 and proceed against what would be the father's proper share in the family properties in execution of the decree against him ignoring the allotment of properties at the partition. *Jonnada Sayi* v. *Jonnada Subbanna*[10] decides that section 53-A applies also to leases of immoveable property. In *Venkatasubbarao* v.

1. (1946) 2 M.L.J. 462.
2. (1946) 2 M.L.J. 209.
3. (1946) 1 M.L.J. 2.
4. (1946) 1 M.L.J. 1.
5. (1946) 1 M.L.J. 246.
6. (1946) 2 M.L.J. 105.
7. (1946) 2 M.L.J. 333.
8. (1946) 2 M.L.J. 357.
9. (1946) 2 M.L.J. 404.
10. (1946) 1 M.L.J. 92.

Veeraswami[1], it is laid down that the effect of the proviso to section 58 (*c*) is that an ostensible sale with a stipulation for repurchase shall not be regarded as a mortgage unless the stipulation is contained in the same document as that which effects the sale. *Kadir Bibi* v. *Muniappa Pillai*[2] is a Full Bench ruling which holds that though section 60 is unqualified in its terms and contains no saving provision in favour of contracts to the contrary, it does not however mean that the parties to a mortgage are precluded from deciding for themselves what is reasonable notice. The ruling in *Nachappa Goundan* v. *Samiappa Goundan*[3] observes that the moment that one mortgagee gets in the rights of other mortgagees or charge-holders, the right of consolidation arises and the amended section 61 has no retrospective effect on accrued rights. In *Sundaram Aiyar* v. *Valiya Mannadiar*[4], it is pointed out that though section 63-A (1) does not speak of a contract to the contrary under which the mortgagor can be compelled to pay the mortgagee the costs of improvements, if there is however a contract under which the mortgagor will not be entitled to the improvements, it may reasonably be inferred that if the improvements are such as cannot be severed and taken away by the mortgagee, the mortgagor must be held liable to pay the cost of such improvements, as he will have the benefit of them. *Jagadeesa Ayyar* v. *Bavanambal Ammal*[5] recognises that the provisions of section 70 can apply to a charge created by a compromise decree. The decision in *Rajagopala Aiyar* v. *Karuppiah Pandithar*[6] points out that under section 76 (*i*) as amended in 1929, the mortgagee is not entitled to deduct any amount which he had paid towards taxes from the mesne profits ordered to be paid by him to the mortgagor who has already tendered the decretal amount under a redemption decree. *Nanjappa Goundan* v. *Pacha Goundan*[7] recognises that under section 82 it is not necessary that the owner of one of the mortgaged properties should pay the whole of the common debt before he can claim contribution and that where he is obliged to pay more than what is payable out of his property he is entitled to file a suit for the excess even though the debt is still undischarged. *Umar Pulavar* v. *Dawood Rowther*[8] makes it clear that section 111 (*g*) embodies a principle of justice, equity and good conscience and though not made applicable *proprio vigore* to agricultural leases for fear of unnecessarily interfering with settled usages, in the absence of special reasons, will apply even more forcefully to agricultural leases than to non-agricultural leases and a proper notice to quit by the landlord to the tenant is necessary before instituting a suit. In *Bridget Souza Bai* v. *Maria Louis Bai*[9], it is pointed out that notwithstanding section 117 the Court can grant relief against forfeiture and it is open to the Court to give such relief in the case of an agricultural lease when the notice of forfeiture is not in accordance with section 114-A.

LAND ACQUISITION.—In *Samiullah* v. *Collector of Aligarh*[10], the Judicial Committee holds that the Land Acquisition Officer in awarding the amount of compensation under section 11 of the Land Acquisition Act is performing a statutory duty, a duty the exercise of which, in cases where the land to be acquired is for a public purpose, concerns the public, since it affects the expenditure of public money, that in assessing compensation he is bound to exercise his own judgment as to the correct basis of valuation and his judgment cannot be controlled by an agreement among the parties interested and that on a reference under section 18, the District Judge must also exercise his own judgment and consider, among other things, whether the award of the Land Acquisition Officer was based on a correct principle. *Babu Kailash Chandra Jain* v. *The Secretary of State*[11] is a decision of the Privy Council concerning section 23 (3) as amended by the U. P. Town Improvement Act, 1919, and holds that a plot of land kept by the owner as a garden and a plot of agricultural land lying fallow at the relevant date cannot be regarded as not being put to any "use" on such date but ought to be valued as a garden in the one case and as

1. (1946) 1 M.L.J. 342.
2. (1946) 2 M.L.J. 82.
3. (1946) 2 M.L.J. 35.
4. (1946) 2 M.L.J. 322.
5. (1946) 1 M.L.J. 143.
6. (1946) 1 M.L.J. 392.
7. (1946) 2 M.L.J. 276.
8. (1946) 2 M.L.J. 229.
9. (1946) 2 M.L.J. 362.
10. (1946) 1 M.L.J. 333 (P.C.).
11. (1946) 2 M.L.J. 295 (P.C.).

agricultural land in the other case. *Chottkaran Keloth Mammad Keyi* v. *Province of Madras*[1] lays down that where after the issue of notifications under sections 4 and 6, on objection by the owner, the Government decides to withdraw from the acquisition but before the issuing of the notification under section 48, the Government changes its mind and seeks to proceed with the acquisition it is entitled to do so without re-notification under sections 4 and 6.

LAND TENURES AND ESTATES LAND ACT.—In *Lakshmi Naidu* v. *Someswara Rao*[2], it is held that in the case of an enfranchised pre-settlement minor inam, the onus lies on the tenant claiming occupancy right to prove that fact and mere long possession paying a uniform rate of rent is not by itself enough to prove that he had such rights. *Kadirvelsami* v. *Sultan Ahmed*[3] holds that the word "agriculture" implies something which is achieved with the aid of human agency and cardamom cultivation is therefore "agriculture" as human element plays an important part in the bringing of cardamom plants to fruition. *Venkanna* v. *Lakshmipathi Raju*[4] decides that the use of the word "agraharam" in a grant will not *per se* imply that the grant was of the whole village when there are other lands in the village not included in the grant and such lands have been described as "waste including the site of the village" and as reserved by the grantor, precluding the application of section 3 (2) (*d*) of the Estates Land Act as amended in 1945. *Jagadeesam Pillai* v. *Kuppammal*[5] is instructive regarding the test of "private land" and holds that the definition in section 3 (10) of "private land" indicates clearly that the ordinary test is the test of retention by the landholder for his personal use and cultivation by him under his personal supervision and the mere fact of the landowner owning both the warams and letting the land from time to time on short term leases is not sufficient to warrant the land being treated as private land. In *Venkateswarlu* v. *Veeraswami*[6], it is pointed out that where by reason of relinquishment by the ryot the kudiwaram right has vested in the landholder there is a merger within the meaning of section 8 and consequently the landholder can only recover the rent for the previous fasli by a suit under section 77 and not otherwise and there could be no charge in his favour. *Tirupathi Naidu* v. *Krishnappa*[7] points out that a patta and muchilika cannot be enforced in respect of lands set apart for pasturage and the only possible exception is that by express language of section 51 (1) a sum payable by a ryot on account of pasturage fees may be mentioned in the patta. In *Rudrayya* v. *Maharajah of Pithapuram*[8], it is laid down that a sale of the entire holding in execution of a rent decree where some of the ryots had not been served with notice will be binding only against those that had notice and on their shares of the holding. *Rajah of Venkatagiri* v. *Atmakuri Ramaswami*[9] points out that the Estates Land Act contains a simplified law of procedure in execution of rent decrees which excludes the application of the execution provisions of the Civil Procedure Code. In *Veeramma* v. *Ramanna*[10] it is held that, where after the passing of a rent decree against the pattadar the lands covered by the patta were purchased by a stranger and notice of such sale was duly given to the landholder under section 145 (2), an attachment and sale of such lands in execution of the rent decree without notice to the purchaser is a nullity. *Annamalai Chettiar* v. *Kuttigan*[11] decides an important point, laying down that a suit to recover costs of repairs to a tank from a dasabandam inamdar by a person who had incurred them in accordance with a requisition of the Collector under section 14 of the Railway Protection Act can be laid only in the Civil Court and there is nothing in sections 140 and 189, *contra*.

CONTRACTS.—In *Narayandas Mundada* v. *New Mofussil Co., Ltd.*[12], the Judicial Committee recognises that in India an oral contract is valid and that when a party pleads that it was contemplated by them that the agreement was not to be considered as complete and binding until it was signed by the parties it is a question

1. (1946) 1 M.L.J. 337.
2. (1946) 2 M.L.J. 168.
3. (1946) 2 M.L.J. 371.
4. (1946) 1 M.L.J. 300.
5. (1946) 1 M.L.J. 23.
6. (1946) 1 M.L.J. 291.
7. (1946) 1 M.L.J. 80.
8. (1946) 2 M.L.J. 80.
9. (1946) 2 M.L.J. 476.
10. (1946) 1 M.L.J. 226.
11. (1946) 2 M.L.J. 268.
12. (1946) 2 M.L.J. 259 (P.C.).

of construction whether the execution of the further document is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. Another interesting pronouncement of the Privy Council is *Mst. Dan Kuer* v. *Mst. Sarla Devi*[1], which re-affirms that the rule that has prevailed in India that where a contract is intended to secure a benefit to a third party, as a beneficiary under a family arrangement, he may sue in his own right to enforce it, has been extended to cases where provision is made for the maintenance of the female members of a Hindu family on a partition of the joint family property between the male members. *Hairoon Bibi* v. *United India Life Insurance Co., Ltd.*[2], deals with the interesting question whether a direction to remit an amount includes remittance by post and holds that though the idea of a direct payment in person or by messenger might also be indicated, remittance by post should be taken to be one of the modes contemplated by the parties. *Mohammad Isack* v. *Sreeramulu*[3] lays down that even as an agreement to refrain from bidding at an auction is not opposed to public policy so also an agreement for the withdrawal of a tender is not unlawful within section 23 or section 27 of the Contract Act. In *Rangiah Chettiar* v. *Parthasarathy Iyengar*[4], it is pointed out that if there is no objection in law to the seller getting some one else on his behalf to deliver the goods to the buyer, there is equally no objection to his being authorised to file a suit as the seller's assignee, deputy, nominee or agent to enforce his rights and that is not a transfer of a mere right to sue for damages but is a transfer of a right under a contract which is still to be performed by both the sides and not after it was broken and a claim for damages had arisen. *Rahima Bibi* v. *Sherfuddin*[5] recognises that although the principle enunciated in section 68 would not apply to the expenses of the marriage of a minor under English Law, the principle has been extended in India to cover the marriage expenses of Hindu minors and it would make no difference if the girl is a Muslim. *Muthuswami Aiyar* v. *Velammal*[6] points out that one of the co-owners of a well executing repairs to it cannot recover contribution from the other co-owner under section 70, where the latter as a matter of fact was not enjoying the use of water from the well. In *Kuppan Chettiar* v. *Ramaswami Chettiar*[7], it is recognised that if the circumstances are such that the law imposes on any person any legal or equitable duty to indemnify, it will imply on his part a promise to do that which under the circumstances he ought to do. The decision in *Indo Union Assurance Co.* v. *Srinivasan*[8] brings out the difference between the relationship of master and servant and that of principal and agent, namely, that while a principal has only the right to direct what work the agent has to do a master has the further right to direct how the work is to be done and in the former case the agent would be entitled to damages in the event of the agency being wrongly terminated only if he had been successful in his agency.

SPECIFIC RELIEF.—The decision in *Singara Mudali* v. *Ibrahim Baig*[9] lays down that a contract by the natural guardian of a minor to convey property cannot be specifically enforced against a transferee from the minor of such property with notice, on the ground that what cannot be specifically enforced against the transferor cannot be enforced against his transferee either. In *Siddique & Co.* v. *Utoomal and Assudamal & Co.*[10], the Privy Council points out that the essential requisite to be proved for obtaining the relief of rectification of an instrument under section 31 of the Specific Relief Act is that it was through a mutual mistake of the parties that the instrument in question did not truly express the intention of the parties. *Sree Meenakshi Mills* v. *Provincial Textile Commissioner, Madras*[11], holds that section 45 cannot apply to a case where the petitioner who had been by an order of the Textile Commissioner given the right to deliver yarn to persons of specified categories delivered them to certain others and thereupon the Textile Commissioner seized the goods for contravention of the order.

1. (1946) 2 M.L.J. 420 (P.C.).
2. (1946) 2 M.L.J. 253.
3. (1946) 1 M.L.J. 187.
4. (1946) 2 M.L.J. 401.
5. (1946) 2 M.L.J. 305.
6. (1946) 2 M.L.J. 273.
7. (1946) 1 M.L.J. 383.
8. (1946) 2 M.L.J. 67.
9. (1946) 2 M.L.J. 103.
10. (1946) 1 M.L.J. 74 (P.C.).
11. (1946) 2 M.L.J. 188.

COMPANY LAW.—In *Krishna* v. *Indo Union Assurance Co., Ltd.*[1], the Privy Council points out that where under its articles of association, a company was empowered to appoint and in their discretion to remove or suspend managers, secretaries, etc., and the company had appointed the appellant as secretary in 1939 for five years and in 1941 appointed a general manager to which the secretary objected, the secretary being only a servant of the company and bound to carry out the duties assigned to him cannot in the circumstances of the case object to the appointment of the general manager. In In re *Kalyanasundara Goundar*[2], it is ruled that where on the resignation of the liquidators appointed on a voluntary winding up of a company, the name of the company was struck off the register under section 247 (5) of the Companies Act and later on another person was appointed liquidator and on his application the company was restored to the register, a refusal by the original liquidators to submit statement of information required by the official liquidator would be an offence and section 177 would apply. In *Sankaram Nambiar* v. *Kottayam Bank*[3], it is held that there is nothing in section 198 to indicate that the powers of the Court with regard to the estate of a contributory or a debtor can be exercised in a summary proceeding under section 235 and a proceeding under section 235 against a director cannot be continued against his heirs after his death during the proceedings.

CIVIL PROCEDURE CODE.—The decision in *Venkatasubba Rao* v. *Jagannadha Rao*[4], makes it clear that a Hindu widow, with reference to the interest devolving on her under the Hindu Women's Rights to Property Act, would be her husband's legal representative within section 2 (11) of the Civil Procedure Code. *Balakotayya* v. *Nagayya*[5] recognises that the doctrine of *res judicata* applies also to decisions in proceedings which are not suits, as for instance, a proceeding under section 84 (2) of the Madras Hindu Religious Endowments Act. Failure by a person to object to a prior execution application of which he had notice, in respect of a maintenance decree against him, that such decree had become unexecutable consequent on resumption of cohabitation subsequent to the decree was held in *Palaniammal* v. *Arumugham Chetti*[6] to bring into operation the bar of constructive *res judicata*. *Ramarayudu* v. *Manikya Rao*[7] points out that the general rule is that a party to a suit cannot in a subsequent proceeding be heard to allege that a decree obtained against him in a former litigation was obtained by collusion between himself and the plaintiff. In *Sri Rajah Kotagiri Madhavarao* v. *Papayya Rao*[8], it is held that an appellate decree confirming a decree passed without jurisdiction can have no more validity than the decree of the first Court and cannot operate as *res judicata*. In *Kuppan Chettiar* v. *Ramaswami Chettiar*[9], it is decided that the doctrine of *res judicata* cannot apply where the earlier suit had been decreed in second appeal against a defendant who had remained *ex parte* in the trial Court after a co-defendant had been exonerated, and a suit is subsequently brought by such defendant who was compelled to pay the decree amount, for indemnity against the exonerated co-defendant. *Ramamani* v. *Basavayya*[10] makes it clear that in a partition action each defendant sharer is also in the position of a plaintiff and where one of the defendants in fact applies for a decree in respect of his share and the alienees are arrayed as co-defendants, the decision operates as *res judicata* and cannot be reopened in a subsequent suit between the particular defendant whose share was the subject of decision and the alienee defendants. *Appalaraju* v. *Venkatasubbarao*[11] lays down that under section 13 for a decree of a foreign Court to be conclusive there should have been a controversy and an adjudication thereon. In *Nemichand Sowcar* v. *Y. V. Rao*[12], it is made clear that a decree of a foreign Court against an absent defendant by consent of the plaintiff and the remaining defendant without hearing any evidence is not a decree given on merits. In *Nachiappa Chettiar* v. *Muthukaruppan Chettiar*[13], it is recognised

1. (1946) 1 M.L.J. 79 (P.C.).
2. (1946) 2 M.L.J. 241.
3. (1946) 1 M.L.J. 53.
4. (1946) 1 M.L.J. 159.
5. (1946) 1 M.L.J. 200.
6. (1946) 1 M.L.J. 277.
7. (1946) 1 M.L.J. 282.
8. (1946) 1 M.L.J. 287.
9. (1946) 1 M.L.J. 383.
10. (1946) 2 M.L.J. 321.
11. (1946) 1 M.L.J. 66.
12. (1946) 2 M.L.J. 16.
13. (1946) 1 M.L.J. 310.

that section 16 cannot apply where the immoveable property, the partition of which is sought, is not situate in British India. *Galley & Co.* v. *Appalaswami Naidu*[1] explains that under section 20, in suits arising out of contracts the cause of action arises either at the place where the contract was made or where it is to be performed or performance completed, or where in performance of the contract any money to which the suit relates was expressly or impliedly made payable. *Lakshmipathi Naidu* v. *Mohammad Ghani*[2] applies the above principle and holds that a suit for damages for breach of contract can be filed at the place where the goods were deliverable or at the place where the price was payable. In *Vastiram Manmal* v. *Ramaswami Iyer*[3], the principle is stated that a condition in a contract regarding forum should be strictly construed and that the restriction applies to the particular proceeding instituted should also be shown. In *Krishna Rao* v. *Gonti Bairagi*[4], it is held that a claim of the mortgagors to set off in execution a right to recover damages against the mortgagee decree-holder based on his failure to supply funds to the receiver appointed in the action for instituting suits for recovery of rents due by the mortgagor's tenants, is not one relating to the execution, discharge or satisfaction of the mortgage decree within the meaning of section 47. In *Nacharammal* v. *Veerappa Chettiar*[5], it is held that as the decree to be executed, where there has been an appeal, is that of the appellate Court of final jurisdiction, the period of 12 years under section 48 has to be computed only from the date of such appellate decree. In the case of partition decrees it is laid down by *Venkataraya Goundan* v. *Mallappa Goundan*[6] that though the decree may be engrossed on stamp paper on a later date, the date of the decree for the purposes of computing the period of limitation for execution has to be construed as that of the date of the judgment. *Venkata Lingama Nayanim* v. *Venkata Narasimha Rayanim*[7] decides that resistance to execution on legal grounds, however ill-founded, could not amount to preventing execution by fraud within the meaning of section 48 (2) (*a*). In *Venkataswami* v. *Tata Reddi*[8], it is laid down that where the sons of the maker of a promissory note are sued on the note after the death of their father the Court can pass a decree against them so as to render them liable not only to the extent of their father's separate property but also to the extent of his share in the joint family property in their hands. *Governor-General in Council* v. *Krishnaswami Pillai*[9] shows that the provision regarding notice in section 80 is express and explicit and admits of no implications or exceptions and imposes a statutory and unqualified obligation on the Court. Where, after a railway company had been taken over by the Government, a suit was instituted against the company for recovery of damages and subsequently leave was sought to amend the plaint and add the Governor-General as a second defendant, it was held in *Governor-General of India* v. *Raghunandan Shenoy*[10] that the suit was not maintainable without notice being served on the Governor-General in Council under section 80. The interesting point is decided in *Chem Abbheong* v. *Packiri Mahomed Rowther*[11] that an enemy army in temporary occupation of a foreign country cannot be said to be the government of that country so as to make a person residing in such country an alien enemy who is prohibited by section 83 from suing in British Indian Courts. In *Jainambukanni Ammal* v. *Rathrapathy Pillai*[12], it is held that where a temple as well as its property are in British India no relief in respect of the property can be obtained except from the British Indian Courts. *Venkatanarasimham* v. *Nagoji Rao*[13] holds that where the effect of an order is to prevent an enquiry into the merits such an order would come within section 105. *Pethu Reddiar* v. *Rajamba Ammal*[14] rules that where a suit by the wife of the alienor to have alienations made by her husband in favour of different persons set aside on the ground of her husband having been insane at those times was decreed, the cause of action against all the aliences being common, a certificate

1. (1946) 1 M.L.J. 11.
2. (1946) 2 M.L.J. 255.
3. (1946) 2 M.L.J. 270.
4. (1946) 2 M.L.J. 85.
5. (1946) 1 M.L.J. 128.
6. (1946) 1 M.L.J. 163.
7. (1946) 2 M.L.J. 383.
8. (1946) 2 M.L.J. 361.
9. (1946) 1 M.L.J. 267.
10. (1946) 2 M.L.J. 65.
11. (1946) 1 M.L.J. 222.
12. (1946) 1 M.L.J. 181.
13. (1946) 1 M.L.J. 216.
14. (1946) 1 M.L.J. 245.

under section 110 can issue if the valuation of the suit taken as a whole on the date of the plaint was above Rs. 10,000. A Full Bench decides in *Gangadhara Ayyar* v. *Subramania Sastrigal*[1] that where the decree of the High Court was one of variation in so far as it had given the plaintiff four more items than had been decreed in the lower Court on a cross-objection preferred by him in the defendant's appeal, and the defendant wished to appeal in regard to all the items whose value was above Rs. 10,000 a certificate can be claimed. In *Lakshmanan Chettiar* v. *Thangam*[2], it is pointed out that the value of the subject-matter in dispute in an appeal to the Privy Council in a partition suit must be taken to be the value of the share in the joint family property in respect of which the appellant is claiming. An important practice point is elucidated in *Srinivasa Varadachariar* v. *Manavala Mahamunigal Temple*[3] that where a small cause suit is tried as an original suit not by mistake or wrong numbering but after the parties have joined issue and a finding is given that it should be tried as an original suit and there was an appeal wherein no question of jurisdiction was raised at all, it is not open to the plaintiff to contend in revision that the appellate Court had no jurisdiction. In *Subramania Vadiar* v. *Sreenivasa Vadiar*[4], it is held that O.1, r. 8 pre-supposes the existence of a right of suit in the plaintiff who instituted the suit and the grant of leave to a person not really interested may be recalled at a later stage in the suit or in appeal. In *Mahalakshmamma* v. *Kasina Mallayya*[5], it is laid down that where failure to sue in a representative capacity was due to a *bona fide* mistake the appellate Court can grant the necessary leave. *Mooka Pillai* v. *Valavanda Pillai*[6] decides that the provisions of O. 1, rule 8 apply to appeals as well as suits. *Kumaraswamiah* v. *Krishna Reddi*[7] emphasises that O. 7, r. 12 requires the Court to pass an order when it rejects the plaint, always giving reasons for doing so. In *Kunhikrishna Reddi* v. *Ramaraju*[8] it is pointed out that where an order on a petition filed under O. 9, r. 9 was passed without notice being issued to the opposite party the order is not one properly made under that provision. *Samankatha Nadar* v. *James*[9] holds that it is a well-settled rule of law in Madras that a minor is not bound by a decree which has been passed against him as the result of gross negligence of his guardian in the conduct of his suit and the same principle will apply to a case where a mother sues on behalf of her minor son and by her gross negligence allows the suit to be dismissed for default. An important practice point is dealt with in *Raghava Mannadiar* v. *Theyunni Mannadiar*[10]. It is explained that where the plaintiff asked for the establishment of his right to a share in lands, what is appurtenant to it, namely, a right to account need not be separately asked for and the absence of such prayer in a partition suit is no bar to the award of mesne profits and O. 20, r. 12 applies only to a bare suit for possession. *Atchayya* v. *Appalaraju*[11] seems to sound a somewhat different note. It points out that O. 20, r. 12 as amended in Madras in 1911 and 1941 does not say that, when there was no claim for future mesne profits in a suit to recover possession of land and the decree therefore did not award any, still the Court can, on an application proceed to ascertain such mesne profits and pass a final decree. It further holds that where the preliminary decree awards no future mesne profits there can be no final decree awarding the same. In *Official Receiver of Ramnad* v. *Muthiah Chettiar*[12], it is held that O. 21, r. 16 only applies to decrees passed by Courts to which the Civil Procedure Code applies and that after the separation of Burma from India in 1937 the decree of the Rangoon High Court becomes a decree of a foreign Court, and consequently O. 21, r. 16 cannot apply. *Chellamma* v. *Ramakrishna Rao*[13] explains that under O. 21, r. 72 when the decree-holder purchases without permission, the Court may, if it thinks fit, set aside the sale but is not obliged to do so and hence even if leave

1. (1946) 2 M.L.J. 69 (F.B.).
2. (1946) 2 M.L.J. 465.
3. (1946) 2 M.L.J. 112.
4. (1946) 2 M.L.J. 221.
5. (1946) 2 M.L.J. 492.
6. (1946) 2 M.L.J. 462.
7. (1946) 2 M.L.J. 190.
8. (1946) 1 M.L.J. 274.
9. (1946) 2 M.L.J. 382.
10. (1946) 2 M.L.J. 117.
11. (1946) 2 M.L.J. 233.
12. (1946) 2 M.L.J. 132.
13. (1946) 1 M.L.J. 17.

to bid obtained by the decree-holder before the first sale could not endure for the resale the purchase need not necessarily be set aside. Another interesting matter is elucidated in *Kalidasa Chetty* v. *Siddha Chetty*[1] which lays down that the responsibility for paying the correct amount into Court as required by O. 21, r. 89 lies with the payer who wishes to have the sale set aside and not with the clerk who receives the lodgment schedule. In *Swaminatha Iyer* v. *Krishnaswami Iyer*[2], it is recognised that though attachment is a necessary preliminary to a judicial sale, a sale without attachment is not a nullity but omission to attach is a material irregularity which renders the sale liable to be set aside under O. 21, r. 90 if substantial injury is proved. *Abdul Razack Rowther* v. *Mahomed Hanif Sahib*[3] emphasises that the terms of O 23, r. 1 (2) themselves make it clear that the Court must state either what the defect is or what are the other sufficient grounds which have moved it to grant permission to withdraw the suit with liberty to institute a fresh suit and hence failure to state them will amount to a material irregularity in exercising jurisdiction. In *Palaniappa Chettiar* v. *Narayanan Chettiar*[4], it is held that the issuing of a commission to examine a witness is a matter of discretion for the Court in the circumstances of each particular case and amongst such circumstances must be included the question whether that evidence cannot be adduced save through the particular witness concerned. *Chhabba Lal* v. *Kallu Lal*[5] is a pronouncement of the Privy Council that O. 32, r. 7 is imperative, that its terms must be strictly adhered to and that the rule applies to an agreement to refer matters in dispute to arbitration. *Venkataswami Naicker* v. *Balakrishna Naicker*[6] holds that where a minor's suit for partition after setting aside certain alienations was after the passing of a preliminary decree compromised out of Court without leave of Court being taken, such compromise is voidable by the minor as against all the parties. Apropos of the obtaining of leave, it is observed in *Rajeswara Rao* v. *Satyanarayana*[7] that it is difficult to hold that the guardian must obtain the Court's consent before the agreement to compromise is reached and all that is needed is that he must obtain such consent before the compromise is concluded, *i.e.*, when it is made a decree of Court. *Sarraju* v. *Venkataraju*[8] holds that a decree passed in a maintenance suit is a final decree which entitles the decree-holder to proceed directly in execution should the judgment-debtor fail to pay and O. 34, r. 5 has no application. In *Panchapagesa Aiyar* v. *Rajamani Aiyar*[9], it is pointed out that as regards sales in contravention of O. 34, r. 14 it is now settled that such a sale is not void but only voidable either by application or by suit where the latter is permissible, by the party affected within one year. *Narappa* v. *Chinnareppa*[10] holds that where an undertaking given by the plaintiff in obtaining an *interim* injunction was broken by him it does not matter whether the undertaking is regarded as an injunction issued by the Court or as a part of the *interim* injunction issued against the defendant and in either view it would be an injunction the breach of which is punishable under O. 39, r. 2 (3). In *Subbamma* v. *Madhavarao*[11], it is held that an order dismissing an appeal *in limine* under O. 41, r. 11 has precisely the same effect as an order dismissing the appeal after notice under r. 32 and an application for amendment of the decree must be made only to the Court which dismissed the appeal.

REGISTRATION.—In *Yanadamma* v. *Venkateswarlu*[12], it is held that where the award of an arbitrator in a dispute between the parties regarding the quantum of property and the terms on which it should be assigned in lieu of maintenance claims directed only the party being put in possession and enjoying a certain property but did not operate as a conveyance and the right to have a conveyance executed later on was also specified, the award stood on no higher footing than an agreement to transfer in future and did not require to be registered. An important decision is that in

1. (1946) 2 M.L.J. 110.
2. (1946) 2 M.L.J. 307.
3. (1946) 2 M.L.J. 113.
4. (1946) 1 M.L.J. 179.
5. (1946) 1 M.L.J. 339 (P.C.).
6. (1946) 2 M.L.J. 219.
7. (1946) 1 M.L.J. 249.
8. (1946) 2 M.L.J. 192.
9. (1946) 2 M.L.J. 121.
10. (1946) 2 M.L.J. 115.
11. (1946) 1 M.L.J. 393.
12. (1946) 2 M.L.J. 345.

Varadaraja Aiyar v. *Kailasam Aiyar*[1] which holds that the mistake of the registering officer in entering a charge in a wrong book could not render the registration invalid and the transaction would be binding provided it did not injure innocent third parties.

STAMP LAW.—In *Sethuraman Chettiar* v. *Ramanathan Chettiar*[2], it is held that sections 31 and 32 of the Stamp Act do not form one integrated procedure for adjudication as to stamps and the time limit referred to in the proviso to section 32 does not govern applications under section 31 and the Collector has jurisdiction to adjudicate as to the proper stamp duty payable although the document was not presented within one month of its execution. *Chidambaram Chettiyar* v. *Meyyappan Ambalam*[3] holds that section 34 only relates to the stamping of original documents and the fact that the document filed in Court before the trial was destroyed by the action of a mob will not put the plaintiff in a better position. A notable ruling regarding section 35 is that in *Ram Rattan* v. *Parmanand*[4] which decides that unstamped memoranda containing details of a partition could not be used to corroborate the oral evidence for determining the factum of partition, that the words "for any purpose" in section 35 should be given their full and natural meaning and the documents could not be admitted in evidence for any collateral purpose even.

COURT-FEES.—In *Ramanathan Chettiar* v. *Ramanathan Chettiar*[5], it is pointed out that while it is true that where the allegation was that a document was sham and nominal and had not effected a transfer of property the document could be ignored and a declaration of title asked for without setting aside the deed, in cases where a person who was himself a party to the document asks for a declaration in respect of the document, the relief prayed for should be cancellation and not a mere declaration in respect of it and court-fee should be paid under section 7, clause (*iv-A*) of the Court-Fees Act. *Kalianna Gounder* v. *Balasubramaniam*[6] decides that members of a joint Hindu family out of possession may ignore a voidable deed and seek to recover possession of their shares and hence the asking for a declaration in respect of such a transaction is in effect one for possession to which section 7 (*v*) applies. *Raja K.J.V. Naidu*, In re[7], holds that a suit for a declaration of plaintiffs' customary rights to graze cattle, cut wood, etc., free of charges from a forest belonging to the defendant with a prayer for injunction, not being for a relief involving possession of land will not be affected by the Madras amendment to section 7 (*iv*) (*c*) and court-fee will have to be paid under section 7 (*iv*) (*e*). In *Kuppuswami Pillai* v. *Taj Fraksha Thaikkal Estate*[8], it is held that where the kudivaram interest in certain inam lands is the subject of dispute and the net profits of the land have to be ascertained for purposes of section 7 (*v*) (*c*) the rent or melvaram admittedly payable on the land to the landholder should be deducted from the gross income. *Venkatasubba Reddy* v. *Ramadoss Reddy*[9] points out that though it is true that when the court-fee paid has been accepted the Court may be deemed to have decided that the fee paid was correct within the meaning of section 12 though no specific order to that effect has been passed, yet in a case which is still pending the acceptance by a ministerial officer of the court-fee paid or the registration of the case without objection cannot be deemed to be a final decision of the question of the fee to be paid. Hence in spite of a suit being registered and numbered it is open to the Court to decide the question of court-fee as an issue in the suit itself and the mere fact that some arguments on court-fee were heard before the suit was registered will not amount to a decision that the fee paid is correct. In *Ponnuswami Chettiar* v. *Mariappa Pannady*[10], the court-fee payable in a suit for declaration of the invalidity of a document alleged to be forged in regard to one of the sheets was considered and it was ruled that the suit need not be stamped as for cancellation of a document and that the plaintiff was entitled to pay court-fee under Article 17-A.

1. (1946) 2 M.L.J. 355.
2. (1946) 1 M.L.J. 373.
3. (1946) 1 M.L.J. 64.
4. (1946) 1 M.L.J. 295 (P.C.).
5. (1946) 2 M.L.J. 114.
6. (1946) 2 M.L.J. 459.
7. (1946) 1 M.L.J. 61.
8. (1946) 1 M.L.J. 190.
9. (1946) 1 M.L.J. 459.
10. (1946) 1 M.L.J. 239.

LIMITATION.—In *Ramkotayya* v. *Seetharamaswami*[1], it is decided that section 5 of the Limitation Act is inapplicable to a case of an application for a final decree under O. 34, r. 5, Civil Procedure Code, and the Court has no power to condone the delay in filing such an application. *Venkataramayya* v. *Venkatasubbayya*[2] points out that inasmuch as in section 25-A of Madras Act IV of 1938 though a right of appeal is given no period of limitation different from that prescribed by the first schedule to the Limitation Act is indicated, the provisions of section 29 (2) of the Limitation Act cannot operate so as to preclude the applicability of section 5. In *Nagabhushanayya* v. *Kotayya*[3], it is held that where an order of a magistrate passed under section 145 (6), Criminal Procedure Code, is not modified by the High Court in revision, it becomes the final order within the meaning of Article 47. *Venugopal and Brother* v. *Gopala Chettiar*[4] holds that where there was an attachment before judgment of a sewing machine and vital parts thereof having disappeared while in the custody of the sureties the owner declined to take delivery of the machine on the raising of the attachment, and sued for the return of the machine in the condition in which it originally was, limitation should be computed under Article 48 or 49 and not under Article 29. *Nagayya* v. *Penukonda Co-operative Town Bank, Ltd.*[5], decides that a claim by an auction purchaser for return of the purchase money where the sale had been set aside on the ground of mistake is governed by Article 96. *Karanamurthi Thevar* v. *Ramanatha Thevar*[6] holds that Article 62 is inapplicable to a claim founded on an equitable basis and therefore a claim against one alleged to be a benamidar in respect of moneys received and held by him being an equitable one will fall under Article 120. In *Official Receiver of South Arcot* v. *Alagappa Chettiar*[7], it is held that a suit by the Official Receiver to have a mortgage executed by the insolvent declared as sham and nominal is governed by Article 120 and the same article will apply even if in such a suit an alternative claim is made under section 53, Transfer of Property Act. *Venkat Rao* v. *Satharaju*[8] holds that where a decree is amended and the same is in regard to an arithmetical error and is not the reason for the grievance against the decree, limitation will start from the date of the original decree itself; but if the grievance is by reason of the amendment the time for the appeal would run from the date of the amended decree. In *Gutti Nukamma* v. *Mansa Bansayya*[9], it is held that where a decree in a suit filed *in forma pauperis* contained a direction to pay court-fee to government and execution applications were filed by the latter but were not proceeded with and thereafter the decree-holder applied for execution the applications filed by government will enure for the decree-holder's benefit for purposes of Article 182.

SUMMARY OF ENGLISH CASES.

SIMPSON, *In re*: FOWLER *v.* TIMLEY, (1946) 1 Ch. 299.

Will—Bequest for charity—Bequest to vicar of named church for work in the parish—Validity.

A gift to a vicar of a named church for his work in the parish means that it is to be used for the purposes of such part of his work (*viz.*, functions connected with the cure of souls in the particular district) as lies within the parish. Such work is sufficiently definite and charitable, and a gift for such work is valid.

SMITH'S ESTATES, LTD. *v.* BOLLAND, (1946) 2 All.E.R. 284 (K.B.D.).

Income-tax—Computation of assessable profits of business—Expenses of litigation—When deductible.

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1. (1946) 1 M.L.J. 192.
2. (1946) 1 M.L.J. 271.
3. (1946) 1 M.L.J. 398.
4. (1946) 1 M.L.J. 241.
5. (1946) 2 M.L.J. 231.
6. (1946) 1 M.L.J. 140.
7. (1946) 1 M.L.J. 113.
8. (1946) 1 M.L.J. 198.
9. (1946) 2 M.L.J. 303.

Out of the profits of a company remuneration paid to an employee was allowed to be deducted only to some extent and the company had to carry the matter on appeal as the same question would arise in future years and if they did not get the remuneration ascertained they could not pay any higher amount to the employee who may therefore leave them.

Held, the expenses of the litigation was an allowable expenditure in computing profits of the business. An expenditure for retaining somebody who is vital to the business is an expenditure which is incurred for the purpose of earning profits.

MEAGHER *v.* MEAGHER, (1946) 2 All.E.R. 307 (C.A.).

Divorce—Past cruelty on the part of husband—Ground for divorce.

It cannot be said that Courts will only intervene to protect the parties to a divorce suit from what they expect to happen. A divorce can be granted on the ground of cruelty already suffered by the petitioner. Where a wife who is given an unreasonable order by her husband disobeys it and the husband then violently assaults her, courts will intervene and grant a decree for divorce.

Quare.—Whether, and to, what extent, provocation amounts to a defence against a charge of cruelty.

R. *v.* WICKS, (1946) 2 All. E.R. 529 (C.C.A.).

Crimes—Offence under statutes which have since expired—Liability to conviction after expiry of statute.

Interpretation of statutes—Solution difficult—If can be doubtful, the benefit of which is to go to the subject.

Sub-section (3) of section 11 of Emergency Powers (Defence) Act, 1939, provided that the expiry of the Act shall not affect the operation thereof as respects things previously done or omitted to be done. There is nothing unreasonable in a person being punished for a breach of the law which was in existence at the time he offended, though Parliament had put an end to it by the time the prosecution was launched. It cannot be said that there is any ambiguity or doubt which should be resolved in favour of the subject and against the Legislature. Though a problem may prove difficult, it by no means follows that the result is either doubtful or ambiguous. Courts and juries exist for the purpose of among other things of solving difficulties both of law and of fact and it cannot be said, that, if the solution is difficult the result must be doubtful.

HOUSEHOLD MACHINES, LTD. *v.* COSMOS EXPORTERS, LTD., (1946) 2 All.E.R. 622 (K.B.D.).

Sale of goods—Contract for—Failure to deliver—Damages—Chain contracts—Practice—Indemnity as to future claims against buyer from their own buyers—Declaration.

Whether or not there has been a repudiation of a contract for sale of goods, depends on the facts of each case.

Where the buyers say "you have not delivered, and we are, therefore, not going to pay on the nail" it does not constitute a repudiation by the buyers of the contract.

Where the buyers to the knowledge of the sellers were buying with a view to resale, the disappointed purchaser is entitled to recover loss of profits which he would have made by the resale. Where there is no market in which similar goods can be obtained, the Court allowed 10 per cent. over the contract price of the goods contracted for.

A declaration of indemnity was also given in favour of the buyer in respect of any future claim for damages for breach of contract which may be adjudged by a Court of law in respect of re-sales to third persons.